

**TOWN OF FOUNTAIN HILLS
MINUTES OF THE WORK STUDY SESSION
OF THE
FOUNTAIN HILLS TOWN COUNCIL
SEPTEMBER 8, 2009**

AGENDA ITEM #1 – CALL TO ORDER AND ROLL CALL

Mayor Schlum called the meeting to order at 5:01 p.m. in the Town Council Chambers.

Present for roll call were the following members of the Fountain Hills Town Council: Mayor Schlum, Councilmember Contino, Councilmember Leger, Councilmember Brown, Councilmember Hansen, Vice Mayor Archambault and Councilmember Dickey. Town Manager Rick Davis, Town Attorney Andrew McGuire, and Town Clerk Bev Bender were also present.

Mayor Schlum announced that there had been a couple of troubling events concerning racial tagging and intolerance and that the community was going to be coming together on Wednesday, September 9th at 5:30 p.m. at the Community Center to discuss and hopefully address them. He encouraged attendance at this important event.

AGENDA ITEM #2 – PRESENTATION BY THE LEAGUE OF ARIZONA CITIES AND TOWNS REGARDING THE COUNCIL-MANAGER FORM OF GOVERNMENT WITH POSSIBLE DISCUSSION.

Town Manager Rick Davis advised that several weeks ago the Mayor had asked him, in light of the fact that they have new Councilmembers and a discussion that has occurred in the past regarding the various roles (Manager/Mayor/Councilmembers), to invite representatives from the League of Arizona Cities & Towns to provide a presentation on the Council-Manager form of government. He added that there were some other items that Councilmembers brought up at one of the last meetings that they also wanted to discuss. Mr. Davis advised that Executive Director of the Arizona League of Cities & Towns Ken Strobeck was present this evening along with Deputy Director Tom Belshe.

Mr. Strobeck addressed the Council and thanked them for the opportunity to speak to them this evening. He advised that he would provide the "lecture" part of the program and then Mr. Belshe would respond to questions from the Council.

Mr. Strobeck outlined a brief presentation and provided a definition of Council-Manager form of government that he developed - a system designed to produce the maximum accountability, economy and efficiency in the operation of local government. He explained that it was a structure that provided a check and balance model that was uniquely used pretty much exclusively in local government settings. He noted that it grew out of the progressive movement back in the early part of the 20th Century that also brought them such things as the Initiative/Referendum/recall processes; the direct election of Senators and other political innovations that were all designed to put power of government back into the hands of the people and to make sure that government was accountable to the people as a whole and not accountable to special interests. He said that they might remember that this was the time of the "trust busters" and President Roosevelt and the whole movement that was trying to clean up government. It was an error of robber barons and the gilded age and all those phrases that they remember from that particular time in history when rich and powerful magnets controlled government as well as corporate institutions. He stated that this was a way for the citizens to fight back and say "this was not the way that the government of the United States was supposed to be, it was supposed to be in the hands of the people."

Mr. Strobeck noted that the Council-Manager concept was first developed and introduced in the State of Virginia in 1908 and today it was the most dominant form or model for local government across the United States and in many other countries as well. He reported that over 3,400 cities and towns in the United States and

over 370 counties were managed and structured under this form of government. He added that in the State of Arizona, virtually all cities and towns operate in that form (some having a Clerk instead of a Manager but still operating on that basis).

Mr. Strobeck explained that this form of government was so wide spread because of the check and balance at it fostered professional management that avoids the appearance of nepotism and favoritism, adheres to objective standards of performance and evaluation, avoids political influence on day-to-day operations, such as, "should we pave this street or the street in front of the President of the bank," or where to make park improvements or who gets various city/town contracts. He noted that those decisions were made on the basis of qualifications and not according to political or financial pressures. He added that the concept was modeled on a corporate structure -- the President was analogous to the Mayor; the Board of Directors analogous to the Council, and the CEO was analogous to the Town Manager that they hired.

Mr. Strobeck stated that under this system, the Council hired a professional Manager to make day-to-day operational decisions regarding personnel matters, Town operations, etc., while the Council was empowered to focus on policy issues, priorities of the Town, provide direction, future plans, approval of budgets, setting priorities, conducting long-term budget planning, issues requiring the passage of ordinances and resolutions, input from citizens, etc. He said that those were roles carried out by the members of the Council. He added that the operational day-to-day running of the Town and its various departments was something that they as a Council delegated to the Town Manager.

Mr. Strobeck explained that those items existed for a reason -- so that the citizens of the community, who elect the Council and have a stake in their communities, have the opportunity to know what was going on and that business was all conducted in view of the public. He noted that it took time to learn systems of government and he was sure that when they were all elected to the Council that it looked very easy from this side of the dais but once they were sitting on the other side, the issues were much more complex and required much more study. He stated that the same thing was true of the person sitting in the Town Manager's seat. He advised that the Town Council sets the goals that they want the Town Manager to carry out (priorities, policies) and then direct the Town Manager to make those things happen. He said that it was because of his education, his ability, his training (usually going from city to city and town to town through the Manager ranks) and taking additional professional educational courses that qualify the person the Council selects to carry out his responsibilities.

Mr. Strobeck advised that when candidates run for office people perceive them, especially the Mayor, to be "the boss of the Town" and said that citizens typically did not understand local government; it was not taught in schools. He said that the Council sets goals by setting policy for the Town, establishing their priorities; doing such things as setting tax rates, approving a municipal budget, and by hiring an individual (Town Manager) accountable directly to them to make those things happen in a professional, efficient manner. He pointed out that the Town Manager was hired to do the leg work and to develop policy options to present to the Council, to make recommendations to the Council and to manage the operations of the Town on a day-to-day basis, but ultimately "the buck stops with the Council" because they have been hired by the citizens to make the Town run and then they have delegated some of that authority to the Town Manager.

Mr. Strobeck referred to sections of the Fountain Hills Town Code that actually reinforced this concept and discussed Article 2-1 – Council, which talked about corporate powers of the Town, and read, "the corporate powers of the Town shall be vested in the Council," which meant that the Council had the ultimate authority. He further read that "all powers of the Council shall be exercised by ordinance, resolution, order or motion," which meant they had the power but they could not do anything except with a majority vote. He stated that this required the Council to work collaboratively with each other. He further stated that the duties of the Mayor were much more explicit, "the Mayor shall be the Chief Executive Officer of the Town, Chairman of the Council, will preside over meetings" and a number of other duties outlined in the Code. He also referred to Article 3-1 that talked about officers in general and the first one was the Town Manager. He read, "The Town Manager shall be appointed by the Council on the basis of experience and administrative qualifications with special reference to actual experience in or knowledge of accepted practice and respective duties as herein set

forth and he shall hold office for and at the pleasure of the Council." He emphasized that the Town Manager was held directly accountable to the Council and the Council was in control; at any time they could hire or dismiss (with a majority vote) the Town Manager.

Mr. Strobeck discussed Paragraph E, Removal, which states, "the Town Manager may be removed by the Council by a majority vote of its members immediately for cause or upon 90-days notice without cause." He said that it goes on to say that "the Town Manager shall be the administrative officer of the Town government responsible to the Town Council for proper administration of all affairs of the Town under the specific direction and control of the Council." He added that the Town Manager was also responsible for ensuring "that all laws and ordinances of the Town were duly enforced; to appoint and, when necessary suspend or remove all employees of the Town except those directly hired by the Council; to coordinate the administrative functions of the various department heads, boards, divisions, services, etc." He pointed to a subparagraph that states, "The organizational structure under which municipal services were performed shall be specified in an organizational chart approved by the Council." He emphasized that that was a big job and an enormous responsibility.

Mr. Strobeck further noted that Paragraph 13 states, "The Town Manager was to devote as much time to the duties of the office of Town Manager and the interests of the Town as necessary."

Vice Mayor Archambault talked about the Town's structure and the fact that the Council approved the organizational chart. He asked if that that would come into play only if the Council decided that they wanted to add a particular office.

Mr. Strobeck replied that if the Town has a general organizational structure that had various departments, he was not sure that it would get all the way down to each individual person in that department, but the Council would certainly approve the general organizational structure.

Vice Mayor Archambault asked for clarification on the creation of another department and if that was when the Council would weigh in. Mr. Strobeck responded that the Council would express that desire to the Town Manager and then entertain a recommendation from the Manager relative to the structuring of that position and how the accountability would work within the Town. He added that the Council would then be in a position to approve that if they so desired.

The Vice Mayor asked if it would require the Town Manager to come to the Council if he wanted to change that structure (consolidate departments, eliminate positions, etc.) and Mr. Strobeck stated that he believed that was subject to interpretation and was not spelled out (one of the gray areas) but as he gets further into the discussion relative to the working relationship that the Council has with the Town Manager he believed he could provide some clarification.

Mr. Strobeck advised that there was another provision in the Town Manager's section of the Code that talked about non-interference by the Council in the day-to-day operations of the Town. He said that it stated, "except for the purpose of inquiry, the Council and its members shall deal with the administrative branch solely through the Manager and neither the Council or any member thereof shall give orders to any subordinate of the Manager either publicly or privately." He stated that this wording made it very clear that the Councilmembers did not want to have staff feeling like they have seven different bosses who could walk in on a moment's notice and say "I want you to drop everything and do this." He explained that the Council's interaction with the staff in terms of directing them and asking them to do things was limited to "can you give me information on this or that," an inquiry. He added that if they wanted to have that kind of discussion about structure, staffing and where people should be, then they should go through the Town Manager.

Mr. Strobeck informed the Council that this type of model helped employees know and understand the chain of command and their role in the organization. He added that it avoided conflicting direction and empowered the Manager who had the full responsibility of reporting to the Council but it also made it clear that the Council was acting through the Manager when it came to the day-to-day operations of the Town. He said that one of the

things he found interesting had to do with the fact that the Code stated that, "all ordinances, resolutions and contract documents shall, before presentation to the Council, be reviewed by the Manager and when there were substantive matters of administration involved be referred to the person who was charged with the administration of those matters." He noted that the Town Code made it clear that the Manager provided input into those matters and the department heads that he supervises needed to be consulted as well and asked for recommendations.

Mr. Strobeck advised that the Councilmembers' job was to listen to their constituents and their fellow citizens and make decisions that chart the direction of the Town. He said that one of their key documents was the Strategic Plan that provided the big picture view of where their priorities were and where they were going to put money and staff resources to use. He stated that they conveyed that vision to the Manager and directed him to fulfill those goals utilizing the resources provided for in the budget and in the staff. He noted that ultimately it was government of, by, and for the people, which was what they were all after, managed and administered by quality, professional staff. He stated that the relationship that was most optimum was when the Council and the Manager both agreed, understood and accepted those different roles and responsibilities and then were able to have really candid dialogue back and forth to work out the kind of issues that arise (such as the point raised previously by the Vice Mayor).

Mr. Strobeck said that he believed it was perfectly appropriate for each one of the Councilmembers individually to meet with the Manager periodically and participate in a candid exchange back and forth on various issues that they might ultimately want to have brought before the Council. Mr. Strobeck indicated his and Mr. Belshe's willingness to respond to questions from the Council.

Mayor Schlum thanked Mr. Strobeck for his informative presentation.

Mayor Schlum said that he had a question relative to giving direction to the Manager in view of Open Meeting Laws and associated requirements (needing a quorum). He asked whether Mr. Strobeck had encountered any challenges associated with that issue and requested additional legal input regarding this matter.

Mr. Strobeck responded that as one of his co-workers who provide training said, "You can look through the entire Statutes of Arizona and you will not see anything that said except **in rural areas**." He said that there were no rural exceptions to the Open Meeting Law. He advised that a quorum of members could not get together and decide ahead of time what direction they were going to proceed in. He added, however, that they certainly could and should be in communication with the Manager about things that they were interested in discussing; even issues that they wanted put on the agenda of a future meeting. He explained that issues arise when a quorum of the members get together and decide how they were going to vote or state what their opinions were about a certain issue. He said that even if they did not have a quorum, if they started a serial communication, i.e. in an e-mail say, "I think this was a great idea" and send it out to the rest of the Council that was a violation of the Open Meeting Law because the member has communicated to a quorum. He stated that if they said by e-mail, "I want to place this on an agenda for future discussion" it was not a violation but if they express an opinion as to whether they liked it or disliked it, then that constituted a clear violation.

Mayor Schlum commented that as far as directing staff, the Council understood that that was something that a Councilmember could not do but sharing information with staff directly and asking for information directly had been the policy in place and the Manager was comfortable with and even encouraged that type of dialogue.

Mr. Strobeck confirmed that that was generally how it worked in other communities as well and asked Mr. Belshe to elaborate more on the issue. He added that that was what he was trying to communicate earlier - that the Council and the Manager needed to be comfortable with where they drew those lines. He emphasized the importance of having a level of trust and a level of mutual respect between the Manager and the members of the Council.

Mr. Belshe addressed the Council and stated that these were all issues of trust and when they were working with a Manager who was open to that, it could be a very good thing. He said that in most successful communities, the Managers were allowed to give his or her professional opinion about something free of the ire of a Councilmember because it might go against something that member wanted. He stressed the importance of that being a two-way street and if the Manager allowed the Council to have more access to his staff, then that should be something that the Council did in return. He added that when that type of relationship existed a stronger trust factor evolves and everyone benefits.

Councilmember Dickey thanked Mr. Strobeck and Mr. Belshe for agreeing to come to the meeting this evening and also thanked them for the League Conference because it provided an opportunity to be together, learn and share ideas. She agreed that it was all about trust and added that the Town was fortunate to have a Manager that wanted to hear from the Council. She said that they have had some instances with staff that were uncomfortable and would go to other Councilmembers and what they were trying to learn from the speakers today, since this was a continuing educational process, was what their responsibilities were. She stated that she felt responsible for staff and wanted staff to be comfortable and not feel harassed or intimidated despite the fact that she did not always agree with them and vice versa. She said that to get something on the agenda, a Councilmember had to get two others who supported such action and so they needed to speak to one another and she wanted to ask about that. She added that in her opinion most of this was about relationships between the Council and the staff -- what was allowed, what was not allowed, what was good practice and when a staff person felt comfortable enough to come to a Councilmember because they have issues that perhaps were not going well in the office it was important to know what to do.

Mr. Belshe said he was going to start with the staff and advised that the thing that would end trust the quickest was if the Manager felt that the Council was discussing (even with the best of intentions in mind) issues that the staff members should be discussing with the Manager. He stressed the importance of maintaining a friendly atmosphere but cautioned strongly against forming personal relationships where staff talked to them about issues facing the Town.

Councilmember Dickey stated that the information being provided was both positive and educational.

Mr. Belshe reiterated that there was no manual on how this was all supposed to work and there were gray areas but the idea was to have open communication. He said that he was aware of the fact that people worried about the Open Meeting Law and emphasized the importance of keeping in mind that the whole idea was when the Council made a decision that affected the Town and debate took place, it must be done in a public setting to allow citizen attendance/input and placed on an agenda for that purpose. He noted that they could talk about placing something on an agenda without having a debate or making a decision and they could communicate with the Manager on an individual basis.

Mr. Strobeck commented that in a private business setting if somebody on the staff, even well qualified people on the staff, knew that their boss was there but if they did not like what he has to say they could always go to the next level and that destroyed trust and should be avoided (the issue should be send back down through the proper chain of command).

Councilmember Dickey said that she just wanted staff to feel comfortable in their surroundings.

Mr. McGuire commented on the e-mail communications that were previously discussed and reported that the Attorney General's opinion on this utilized an example that he thought made it even more of a "hairline split" -- he read from the opinion, "Councilmember Smith was admitted to the hospital last night" was not a proposal but "We should install a crosswalk at 1st and Main" was a proposal so if the e-mail said "we should put on the agenda a discussion to put a crosswalk at 1st and Main because I thought it was a good way to do it," that has stepped over the line as far as the opinion was concerned. He emphasized that there was a very fine distinction between what they could send out to all of the members and that was why their conservative approach has

always been, "just don't do it." He added that information in and of itself might relay a Councilmember's position on a proposal.

Vice Mayor Archambault noted that every two years four members of the Council were elected and so faces could change or stay the same. He stated that the issue that usually arises was when new Councilmembers come on the board; existing members try to take them under their wings and share information. He said that oftentimes what he would try to do was tell members that he was going to meet with certain members of staff because there was an item on the agenda and he was doing some research and would ask if they wanted to join him in that discussion. He advised that oftentimes there was a pushback because new members were afraid that would violate Open Meeting Laws so usually a seasoned Councilmember would agree to join him. He added that they then met with that staff person and found out some information that was pertinent to the agenda item and wanted to share it with the rest of the Councilmembers. He stated that his policy has been (and he would like to know if he had been incorrect) to call the Councilmembers and say that he has met with so and so and this was the information that he obtained and wanted to pass it on. He stressed that he was not asking for an opinion or giving an opinion on which way he would go on the issue but he wanted to share the information. He said that early on he used to put the information in e-mails but found out the problems associated with that and stopped the practice. He asked whether that was an appropriate way to share information.

Mr. Strobeck replied that he would be more comfortable if the staff member sent the communication to the Council because if the Vice Mayor called each member of the Council and said, "I just want to share this with you," he has already expressed what was of interest to him and what was a priority. He added that even in how he discussed something, he believed he has communicated perhaps what the Vice Mayor felt about it.

Vice Mayor Archambault advised that staff would typically send an e-mail to the Council asking them to transfer the materials on. He said that sometimes they run into a situation where the day before the Council meeting they were getting information and so he tried to transfer it to everyone so that they had the same information he has.

Mr. Strobeck commented that if the Vice Mayor called one or two members, that would not constitute a problem but how he controlled what went on after that or how people translate it ("I talked to the Vice Mayor and he felt this way about it") could present a problem.

Mr. Strobeck emphasized the importance of having a balance, a happy medium, and said that they could not be expected to live in a vacuum. He advised that another Attorney General opinion that they have backed away from had to do with one of the neighboring communities that had some Councilmembers attend a Work Session of a sub-committee. He stated that they did not participate or do anything more than sit in the audience and at one point the Attorney General considered that to be a violation of the Open Meeting Law.

Vice Mayor Archambault discussed the authority of Councilmembers and said that obviously they had the right to ask questions of staff and to talk to the Town Manager. He added that a lot of times when new members come on board they seemed to believe that they had decision making authority, which they really did not have. He stated that it became a learning curve to realize that it took four members at the dais during a posted Council meeting to make policy decisions move forward. He said that oftentimes a policy decision gets made that a member strongly feels was the wrong decision and the hardest thing that a Councilmember had to do was not render policy decisions but rather to accept decisions handed down by a majority of the Council.

Mr. Belshe concurred with the Vice Mayor's comments and stated that they were only as powerful as the votes they have. He added that even if a member was positive that he was right, it all went back to respect (they already discussed trust) and respecting the decision that has been made by the majority of the Council. He noted that the law provides avenues to any citizen, including Councilmembers, that could be taken but protocol and respect were paramount. He said that if they had one Councilmember who consistently remains isolated and did not become part of the group that could be a problem. He advised that it was the duty of the entire Council to try and make sure that where possible all opinions were considered and everyone was part of the discussion.

Vice Mayor Archambault agreed that it was important that they all accept the decisions that a majority of the Council makes and that they then move forward and let it go because otherwise it just tends to "eat you up." He also commented on the fact that the authority of a single Councilmember was very limited and asked what penalties were in place as far as Councilmembers violating their authority. He added that sometimes they would hear something about another municipality and a letter being sent to them by the County Attorney or Attorney General's Office regarding an issue (violation) and other times they heard about Councilmembers getting away with everything and nothing was done. He expressed the opinion that there did not seem to be an even keel being weighed in and so sometimes members thought that they could get away with anything because all they were going to get was a letter. The Vice Mayor clarified that probably all of them at one time or another have perhaps stepped on the other side then realized it and stepped back.

Mr. Belshe said that their hope was that they did not have to have outside government police them. He reported that the Statutes were in place for specific violations of the law and when violations were reported to the Attorney General's Office by the citizens, and then the Attorney General's Office takes it from there. He added that they might decide that there was not enough evidence or they might decide to pursue the matter. He said that someone starts that process -- a Councilmember, a citizen, a group, etc. He stated that it was not something that the County Attorney's Office or the Attorney General's Office routinely checks on (to make sure that cities/towns were complying with the laws).

In response to a question from the Vice Mayor relative to where the line actually was, Mr. Strobeck cautioned the Council to be skeptical about what they read in the newspapers and he discussed challenges associated with monitoring all of the cities and towns. He advised that the League zealously tries at the State Legislature to make sure they communicated that they did not want to have somebody watching cities and towns all the time, that they were self-regulating/self-correcting and that was why they had attorneys and professional staff, and that training sessions were conducted.

Vice Mayor Archambault advised that he was not advocating for the County or the State government to watch over the cities and towns; he was stating that it appeared that issues get reported and then they were treated differently depending on which city/town was involved (no consistency). He stated that one of the things he had always tried to do when he visited with staff was to call them ahead of time and ask what would be an appropriate time to come over and pose some questions. He said that he has always tried to maintain a comfortable atmosphere and if staff felt that he was crossing the line, or if he was getting too directive he had encouraged them to push back. He added that in any city or town, if a Councilmember walked into a staff member's office, they typically stop what they were doing and ask, "What can I do for you." He emphasized that was not always the intention of the Councilmember walking into a staff member's office and he believed that staff needed to be comfortable enough to know that they could say, "Can I answer your question in a few minutes? I have something on my desk." He asked when would it be appropriate for staff to push back and say give me some time?

Mr. Strobeck responded that staff was going to give deference and respect to elected officials because that was how they were all trained and that was an appropriate thing to do. He stated that it was a matter of respect and a matter of trust and if someone was encountering this on a regular basis, on a drop-in system, he would suggest that the Councilmember call the Manager and say that he/she would like to meet with the staff person, explain what he/she would like to talk about and ask for an appropriate time in which to do so. He added that if the Councilmember has a comfortable relationship with the staff person, he/she should call that person and ask when would be a good time to talk about certain specific issues. He suggested discussing the matter with the Manager to determine what would be most comfortable for the staff members.

Vice Mayor Archambault advised that he found himself calling staff instead of just walking by to find out what would be a good time to meet with them and then staff just invited him in.

Mayor Schlum asked Town Manager Rick Davis to speak to the ICMA pledge and how that affected the Council-Manager relationship.

Mr. Davis stated that Ms. Shaunna Williams assisted him in administering a survey of staff regarding how they would like to be approached/visited by an elected official and reported that although the majority said that they would prefer that members call ahead to make an appointment, they also understood that there were some certain circumstances that could occur, such as when a Councilmember might just be passing by. He said that staff was very flexible with that and although in an ideal world a "heads up" would be appreciated; sometimes that was just not the case. He reported that the ICMA Code of Ethics obligated him to resist any encroachment on administrative duties. He added that his situation was complicated further by the reality that his contract obligates him to adhere to the ICMA Code of Ethics, which meant that if a Councilmember crossed the line into the administrative realm and he did not resist that, he would be in breach of his contract.

Mayor Schlum asked if all cities/towns were governed by the same structure in Arizona and encouraged Mr. Davis to provide input relative to this issue.

Mr. Davis stated that during previous employment, Councilmembers gave staff direction relative to a storm water issue and emphasized that no matter how many organizational charts were provided to employees, they still viewed the Councilmembers as "the top." He said that over the last 15 years he has tried to explain municipal organizational structures and especially in Fountain Hills, the staff was the most knowledgeable, professional staff he has every worked with, but it did not matter because the risk was still there and they did not want to be placed in the situation of having to decide between a member of the Council or the Town Manager. He added that they rely on the Councilmembers to know what their roles are and if they cross that line many times they would err on the side of doing whatever it was the Councilmember wanted them to do. He advised that the Councilmembers have "implied power" and although staff understands how the organizational chart looks they also were of the mind that said, "Yeah, but in the real world it did not exactly work that way so I better do what the Councilmember told me to do." He said that the Councilmembers could have that effect on employees because they viewed the Mayor and Councilmembers as bosses and that was a respect that they paid the Council but it could work to staff's detriment as well if the Council did not fully understand their role. He urged the Council not to rely on line personnel telling them where the line was because they would not usually do that.

Mr. McGuire said that he believed that the only item left out of the discussion regarding penalties was the Town Code penalty and noted that it always existed. He stated that Mr. Strobeck noted the section regarding non-interference and unfortunately the way the Town Code worked, a general penalty existed unless a penalty was actually spelled out and because no actual penalty was spelled out, a general penalty of a Class 1 Misdemeanor applied to a violation of that Section. He added that he did not believe they have ever had someone even whisper about a violation of that Section rising to that level, but in the extreme case that was where it would wind up. He said that obviously that would wind up in someone else's court because they would not throw that in Judge Armbrewster's lap; it would go to Scottsdale or somewhere else to determine whether a violation had occurred. He stressed the importance of keeping that in mind.

Mr. McGuire stated that the other important item to keep in mind (and he has only seen it happen once) involved an unfortunate set of circumstances where they had a workplace harassment injunction requested by an employee of the city against other employees of the city and found themselves in the unenviable position of standing before a judge asking for an injunction against several of their employees who were soon to be ex-employees at that point. He commented that it was a very odd little Statute but it had been used before. He cautioned that when interactions occur between staff and the Manager, and/or staff and the public, and/or staff and the Council, the underlying tone of all of those things was that there was an expectation in the workplace that the employees feel secure. He advised that they have not had that type of situation in Fountain Hills and said he hoped to never see it happen.

Councilmember Leger said that he understood that there should be no interference and the Councilmembers should not provide direction to the administrative staff. He expressed the opinion that was not a gray area. He stated that Councilmembers did not and should not direct administrative staff and if a Councilmember continued to do that, he would like to know the best course of action for either the Council or the Town Manager to take.

Mr. Belshe replied that different cities/towns had taken different courses of action because they were policing themselves. He commented that the first step that he would hope they would take would be talking about that issue as a Council as part of a Planning Session or Retreat. He stressed the importance of bringing it to the attention of the offender with the intention of notifying the member that he/she was in violation of the law. He added that if the self policing did not work, then that would become an issue that should be discussed with the Town Attorney.

Councilmember Leger asked what the best course of action would be should staff feel that they were being harassed and working in a hostile environment. Mr. Belshe responded that the Town has training resources available as a member of the Arizona Municipal Risk Retention Pool. He noted that the "Pool" specialize in that type of training and would be a good place to start. He advised that attorneys actually talk about what those trials were like, what the complaints lead to, and the destruction of careers that could happen if those types of things were going on. He agreed that should the behavior not stop, there could be legal consequences. He said that it really depended on the amount and the severity and he could not speak to all cases but people who really specialized in that were the "Pool" and they have acted as attorneys for a lot of cities and towns on a lot of cases.

Councilmember Leger thanked Mr. Strobeck and Mr. Belshe for their clarifications and commented that such violations could have severe consequences. He asked if typically that was something that was self-reported by the organization.

Mr. Belshe responded that he did not believe that there was any typical way that it happened.

Councilmember Dickey said that she thought it was clear then that people who work for the Town of Fountain Hills had the right to work without excessive interruption and/or harassment, fear or dread or anything like that. She stated the opinion that most reasonable, mature people knew where the lines were drawn and she appreciated the fact that Mr. Strobeck and Mr. Belshe were kind enough to join them this evening and share their expertise in this important area.

Mayor Schlum also thanked Mr. Strobeck and Mr. Belshe for their presentation and input.

Mr. Davis commented that it was exceptional to have both experts come to the Town and speak to them on this important issue and said that he wanted to publicly thank them. He added that the level of service the Town (and others) receives from the Arizona League was absolutely "tops" and said that the conference was very well done and one of the most valuable he had ever attended.

Vice Mayor Archambault agreed the conference was the best one he ever attended and said that they were true professionals and he appreciated their comments and certainly looked to them for their valuable advice.

Councilmember Hansen said that she would like to jump back to the issue of it taking three Councilmembers to place an item on an agenda because it did pose some challenges at times.

Mr. Belshe responded that he received calls quite often regarding this issue and said that the reason that they had gone to that was because normally the Mayor was the person who decided but in some towns they had no alternative to that process. He said that they came up with the alternative that required three members of the Council to place something on the agenda in order to not have one person who just kept items from being discussed on the agenda. He advised that the League had not conducted that kind of a survey but they had found that many Councils right now were developing Rules of Conduct because of these types of issues. He said that they have formalized rules for working with each other and this was one of those. He emphasized that the Town pays a very good attorney to make sure that they did not cross that line and he would just follow the attorney's advice. He added that that goes to a lot of other things that they were not going to talk about this evening -- if they were worried about conflicts of interest, Open Meeting Laws, etc., and if you were a new Councilmember and have not yet sat down to discuss those issues with the Town Attorney, then you certainly should do so. He

added that the Town's attorney would be the person in Court defending them and so they should take advantage of his expertise.

Mayor Schlum commented that they had gotten around this issue because he did not believe there had been one suggested item that he had not agreed to place on the agenda. He added that he could see problems if there was one Councilmember who had all these great ideas and wanted items placed on the agenda but the remainder of the Council disagreed. He discussed the fact that staff hours were dedicated towards items placed on agendas and said it could be quite costly before the items come before the Council. He said that if that became an issue, then they would have to address it.

Vice Mayor Archambault noted that there was an item on their agendas that allowed one Councilmember to put something there for discussion purposes in order to determine whether they had the other two votes needed to place the item on a future agenda for discussion/action.

Mayor Schlum concurred with the Vice Mayor's remarks.

Mr. McGuire clarified that that still required the item to be placed on an agenda so that the public knew what they were going to talk about but added that it did not require any "prep." He said that a Councilmember could ask that the issue be placed under that agenda item individually and discussion would take place during the end of the meeting and the Council could then discuss whether or not they wanted staff time devoted to it in order to bring it back to the full Council. He explained that the purpose of that agenda item was to ensure that one Councilmember was never shut out but to also ensure that prior to staff time being used to generate full blown items for their consideration, there was a consensus that the items should move forward. He added that that was the purpose of the three-step process.

Mayor Schlum reiterated the Council's appreciation to Mr. Strobeck and Mr. Belshe for their informative presentation.

AGENDA ITEM #3 – PRESENTATION OF THE STREET YARD CONCEPT PLAN BY JAIME KURRY, AIA, LEED, AP, WITH DEUTSCH ARCHITECTURE GROUP WITH POSSIBLE DISCUSSION.

Public Works Director Tom Ward addressed the Council relative to this agenda item and said that the Street Yard Concept Plan had been in existence for over ten years and last Fiscal Year they thought it would be a good idea to develop a Concept Plan that contained some type of a tool that would tell them whether they have an effective site; a site that could accommodate their staff properly. He stated that they hired the Deutsch Architecture Group to provide a study and tonight the Council was going to hear a presentation by them that would help them better understand the site and provide some direction down the road. He thanked Mr. Davis for his participation and Ken Kurth, the Town's Streets Superintendent, who attended all of the meetings. He added that with them this evening was Jamie Kurry and Tammy Karr from the architectural firm. He also expressed appreciation to all of the Councilmembers who were able to take time out of their busy schedules to meet with him and to take a look at the street yard challenges that exist.

Ms. Kurry addressed the Council and highlighted a brief presentation on this agenda item and referred to various slides (copy available in the office of the Town Clerk). She discussed the Master Plan Process (review and document current conditions; establish standards; project future space needs and design and cost estimate conceptual plans for the future; understanding operations (conducted three programming meetings to look at flow of work, flow of products/vendors on site, staff relationship {managers}, parking storage, the need for public access and the pros and cons of the current layout); the review and documentation of current conditions; the importance of establishing standards, projecting future space needs; the design alternatives of a conceptual plan for the future; comparisons conducted to confirm good stewardship of funds; and cost estimates and projections.

Ms. Kurry commented on the fact that the process was interactive and staff had provided input and the Group provided their extensive professional expertise. She reported that Plan D appeared to be the most desirable of the proposals and explained the details of the conceptual plan contained in the Councilmembers' packets. She said that of significant importance to Mr. Davis and other Town staff was whether they were being good stewards of the Town's funds in making their recommendations and based on their extensive research and analysis they believed they were. She reported that in addition to themselves, they did have cost estimating specialists on their Master Planning Team and a full cost estimate relative to the recommendations was conducted. She advised that the cost of the demolition for the existing site work that needed to take place and a new building for masonry was \$1.7 million. She noted that one suggestion made by staff was that instead of a traditional masonry building they use a pre-engineered metal building, which would also work well for this situation and that estimate came in right around \$1 million.

Ms. Kurry said that she had covered all of the Phase I items that were included and the proposal did not include new service bays for fire trucks. She noted that their report also contained additional recommendations such as covered parking spaces and a fueling station and they were not included in the prices. She indicated her willingness to respond to questions from the Council.

Mayor Schlum thanked Ms. Kurry for her presentation.

Councilmember Dickey asked whether the proposed new building would have a flat roof and Ms. Kurry replied that the pre-engineered buildings were not built with flat roofs and would most likely not have a flat roof. Mayor Schlum said that he believed that the question was, "can solar pay for this potential new building?" Ms. Kurry pointed out that the building was pretty small and stated the opinion that solar on the roof would not cover it but it was certainly an option.

Mayor Schlum commented that it seemed like a real shame to have to tear down the large covered area that was in place and added that Mr. Ward was aware of the financial situation they were in today but it was good to keep their eye on the ball and to determine what the needs were to operate effectively in the community as they continue to grow.

Councilmember Leger said that he got the feeling from Ms. Kurry that her firm's expertise extended to organizing space, which hopefully went hand-in-hand with being an excellent architect. He said that at this time all municipalities were wrestling with timelines, costs and availability of funds and asked whether short of doing this project if there were some interim activities that the Town could engage in to enhance that environment. He added that he knew that this was not within their scope of study but asked for input.

Ms. Kurry replied that as far as providing services to the citizens she suspected that not much could be done to improve that area. She added, however, that as far as providing a comfortable work space for staff she believed that perhaps some re-arranging on-site without building a new building might allow the staff to do their job more efficiently. She said that the Mayor had mentioned the covered parking and noted that it did look like an expensive piece of covered parking but it was located right in the middle of the site and it did make it hard for them to get around. She added that there might be some site work that could be done instead of building that would make it a little easier on the staff but that was not something that they had explored.

Mayor Schlum reiterated his appreciation to Ms. Kurry for her presentation.

AGENDA ITEM #4 – DISCUSSION OF A POSSIBLE AMENDMENT TO THE TOWN CODE RELATED TO THE REMOVAL OF TRASH CANS FROM THE CURB.

Planner Gene Slechta addressed the Council relative to this agenda item and provided a brief overview of the Staff Report contained in the Council's packets.

Mr. Slechta said that they were here tonight to consider whether it was appropriate to place restrictions on when a trash container should be placed out for collection and stored after the collection. He noted that Mr. Davis requested that staff look into this issue in some depth as a result of complaints received. He stated that although the Staff Report indicated that a rather small number complaints had been reported but that did not mean that citizens were satisfied. He added that not having an ordinance in place that addressed this clouded the issue somewhat. He reported that staff examined other Valley communities to see if they regulated trash can placements and timings; their research also uncovered seven reported complaints about trash containers left at the curb for an excessive period of time (from 6 to 30 days) and staff could not determine how many were left out for more than 24 hours, which some felt was an appropriate length of time for a container. He said that on the surface the problem did not seem to be systemic.

Mr. Slechta informed the Council that staff researched 11 communities in the Valley, both cities and towns, and noted that 9 of those municipalities currently had ordinances in place. He added that one would have an ordinance to present in the fall (Buckeye) and another (Queen Creek) has no plans at all to create an ordinance that addressed this issue. He said that Queen Creek felt that since most of the Town has HOAs, they were leaving that question up to them. He stated that 7 out of 9 communities request that the residents place the containers out no earlier than 6:00 p.m. on the day prior to their scheduled pickup. He noted that storing the container after collection was much more varied with the latest being early on the day after collection. He reported that Fountain Hills had fewer residences under HOAs than Queen Creek but staff felt it worthwhile to explore what the HOAs were doing in Town. He advised that staff contacted Firerock, Eagle Mountain and Sunridge Canyon and said that they all have some type of guidelines in place regarding trash container curb placement and they were all similar to what the ordinances in other municipalities required.

Mr. Slechta stated that staff's opinion was that the Council should consider amending the Town Code relative to restrictions on when trash containers could be placed at the curb. He added that staff felt that, like other Valley communities, 6:00 p.m. the evening before collection was a reasonable time and restoring the container back by 7:00 a.m. the morning after collection also appeared appropriate. He added that it was clear and less restrictive than what was in place in other communities. Mr. Slechta indicated his willingness to respond to questions from the Council.

Mayor Schlum thanked Mr. Slechta for his presentation.

The Mayor commented that he saw the need to have some ability for the Town to do something about containers that became problematic but added that the enforcement piece was always the fearful part. He emphasized that he did not want the Town to be viewed as a HOA. He asked what was currently in place to allow staff to get people to remove cans that had been outside for extended periods of time (force the owner to be responsible).

Mr. Slechta replied "persuasiveness" and added that they did not have anything on the books to cover this type of situation. He said that Code Enforcement staff went out and talked to the owners when complaints were received and stated that it was his understanding that most, if not all, of the homeowners who were in violation came into compliance following discussions with Code Enforcement staff. He reiterated that since 2008 the Town had only received 7 complaints.

Councilmember Leger said that he was not sure that he could support a code or an ordinance that would define usage. He added that he understood the dilemma in terms of providing feedback to the community but it did not appear as though the situation was prolific. He advised that if they were going to put any energy into this at all, he would suggest that it be educational in nature (come up with some guidelines and explain why following them would be beneficial to the community). He expressed the opinion that enforcement would be a nightmare and he would prefer handling it from an educational standpoint rather than an enforcement standpoint. He stressed the importance of avoiding rigid parameters.

In responses to a question from Mayor Schlum, Mr. Slechta advised a number of the communities surveyed wanted the trash cans placed out in the street as opposed to on the curb or in the driveway.

Councilmember Leger noted that oftentimes the trash companies would define where they would like the cans placed. He said that as far as recommended guidelines, it would seem that placing the cans up against the curb would make sense because it would lessen the likelihood of the cans being knocked over. He stated that there were a number of common sense things that they could look at and recommend. He added that perhaps the information could be included in one of the Town's publications. He stressed the importance of appealing to citizens to use their best judgment when it came to this issue.

Mayor Schlum commented on the fact that the complaints had been few and Code Enforcement staff had been able to remedy the situation without benefit of an ordinance.

Mr. Slechta concurred with the Mayor's statement.

Councilmember Dickey said that because there had not been a lot of complaints people were probably complying because that was what they wanted to do. She added that the only reason she would agree to adopt an ordinance relative to this issue would be to provide a stop gap for times when they really did need something. She stated that she did not think that the ordinance would actually affect a lot of people if they were being reasonable and placing their cans out/putting them back within appropriate timeframes. She expressed the opinion that waiting until the next day to put the cans away was one of the better parameters provided by Mr. Slechta. She said that this was probably just one of the things that would be in place for when it was needed and added that they would not be policing the Town looking for violators. She added that if there was a tool in place it would probably help staff and for that reason she would support putting something on the books.

Mr. Davis advised that staff always operated under the principle that 90% of the purpose for any new law was to simply "paint the stripes on the field" so that people knew where the parameters of appropriate behavior lie. He reported that 90% of the people were self-regulating but they needed to know what the rules were and there could be some frustration associated with that. He added that 10% of the purpose of laws was to address extraordinary circumstances. He said that what prompted this whole discussion was not only the few complaints that were received and the realization that the Town did not have a clarification in the Code as to the proper placement of trash cans, but also an incident where a resident was perpetually leaving his can out at the road and whenever he had trash he would just walk it out to the road so the can was never brought in. He stated that those types of situations were rare but if it were not for the cooperation that staff received from the resident, they really would not have had any alternative but to continue to allow that trash can to remain out there. He reiterated that people needed to know "where the lines were drawn on the field." He added that when staff found what appeared to be "holes in the Code," they would bring those before the Council for discussion and input.

Councilmember Hansen expressed appreciation to Mr. Slechta for the extensive research he conducted on this issue.

AGENDA ITEM #5 – ADJOURNMENT.

Vice Mayor Archambault **MOVED** to adjourn and Councilmember Brown **SECONDED** the motion, which **CARRIED UNANIMOUSLY** (7-0). The meeting adjourned at 6:47 p.m.

TOWN OF FOUNTAIN HILLS

By _____
Jay T. Schlum, Mayor

ATTEST AND
PREPARED BY:

Bevelyn J. Bender, Town Clerk

CERTIFICATION

I hereby certify that the foregoing minutes are a true and correct copy of the minutes of the Work Study Session held by the Town Council of Fountain Hills on the 8th day of September, 2009. I further certify that the meeting was duly called and that a quorum was present.

DATED this 1st day of October, 2009.

Bevelyn J. Bender, Town Clerk